

As ORA witness Elfner testified, the FCC audit will focus on accounting requirements of the Telecommunications Act and on compliance with FCC rules. However, California's existing affiliate transactions rules are tailored more precisely to Pacific Bell than are those of the FCC.<sup>47</sup> We believe that it is prudent to require that these California-distinct matters be examined in a separate audit conducted at the same time, and in cooperation with, the FCC audit.

The FCC has delegated authority to its Common Carrier Bureau to form the joint audit team in cooperation with the Commission. Our order today directs our Office of Ratepayer Advocates to consult with the Common Carrier Bureau on the timing and retention of the independent auditors who will conduct the audit, and then arrange for an audit of Commission affiliate transaction rules (including any network services provided by Pacific Bell) and cost allocation rules either as part of the joint FCC/state audit, or as a separate audit in conjunction with the joint audit, with costs to be borne by the applicant. A similar audit would be required each two years thereafter at the time of subsequent FCC/state audits.

#### **19. Use of Pacific Bell Name**

TURN's witnesses testified that PB Com obviously expects to rely on the Pacific Bell name to attract long distance customers. PB Com witnesses testified that they will make little or no effort to try to explain to callers that PB Com is an affiliate company operating independently from Pacific Bell. In view of this, TURN argues, PB Com should pay a royalty (TURN proposes 5% on gross revenues) to Pacific Bell for as long as PB Com uses the Pacific Bell name. "Obviously," TURN states, "if a potential

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<sup>47</sup> The Commission in Pacific Bell rate case proceedings imposed affiliate transaction rules to ensure that ratepayers are indifferent to transactions between Pacific Bell and Telesis affiliates. (See Decisions 86-01-026, 87-12-067 and 92-07-072.) Among them: non-tariffed services provided by Pacific Bell are priced at the higher of fully distributed cost plus 10%, or market; a 25% transfer fee applies to transferred employees; a 13% referral fee applies to sales made by Pacific Bell employees; transfer of an asset worth \$100,000 or more must be reported to the Commission in advance.

licensee...wanted to make use of the PacBell name, PacBell would charge for that privilege. The same result should obtain here." (TURN Opening Brief, p. 39.)

PB Com's witness Emmerson testified that PB Com's use of the Bell name does not create a subsidy of PB Com by Pacific Bell, adding:

"Unless using PacBell's brand name imposes an incremental cost on PacBell, there cannot be a subsidy created by such use, even if that use is free. The use of the brand name could only impose a 'cost' on PacBell if PB Com intended to degrade the Pacific name in some way." (Ex. 103, p. 20.)

Emmerson testified that PB Com's use of the name was likely to enhance rather than degrade the name, given the additional exposure to customers and the expanded scope of service which PB Com will provide.

The Commission has considered this issue before. In 1993, in a decision involving the spin-off of PacTel Cellular, it was held that no compensation was owed by the affiliated company for its use of the Telesis name, stating:

"The name and reputation of a utility is not an asset to which ratepayers have a claim. Indeed the utility has never included good will in the rate base of a utility for ratemaking purposes. It follows that ratepayers have never had to pay through rates of return on the value of good will." (Re Pacific Telesis Group (1993) 51 CPUC2d 728, 754, citing D.88-01-063, 27 CPUC2d 347, 369 (1988).

TURN argues that the Pacific Telesis case is distinguishable, because here TURN is not stating a claim in the name of ratepayers, but rather for Pacific Bell in an effort to protect its financial viability. However, TURN has not demonstrated that Pacific Bell will incur any cost or financial harm as a result of PB Com's use of the Bell name. Nor has it shown that the value of the name will be dissipated in any way.

Accordingly, we decline to require payment of a royalty by PB Com for its use of the Pacific Bell name.

## 20. Access Charges

AT&T and MCI urge the Commission to require that Pacific Bell's access charges be priced at the level of incremental cost before PB Com is permitted to enter the market. AT&T's witness testified that because Pacific Bell still holds a monopoly over access to the local exchange network where all long distance calls must originate or terminate, the danger exists that it could arrange to charge PB Com less for that access and impose a price squeeze on competitors.

PB Com's economist witness testified that the access charge price squeeze theory has no merit. First, PB Com has stated that at least initially it will be purchasing interLATA capacity from Sprint. Thus Sprint, not PB Com, will be Pacific Bell's access customer. Second, this Commission and the FCC both require that Pacific Bell provide access services, or any other transmission or switching service, to PB Com at the same prices it provides those services to competitors. Thus, if PB Com obtains intraLATA capacity from Pacific Bell, it will do so at tariffed rates available to other carriers.

AT&T and MCI raised much the same access charge argument before the FCC in connection with a Bell affiliate's purchase of unbundled elements with which to provide local exchange service. The FCC rejected the argument on unbundled elements, stating that it will address access charge reform in a separate proceeding.<sup>48</sup> Moreover, the FCC concluded that MCI's argument – that opportunities for discrimination and cross-subsidy are greater when a Bell operating company provides network elements to its affiliate than when it provides resold services – is speculative. To the extent that concerns over discrimination arise, the FCC said, there are safeguards in Sections 251 and 252 of the Telecommunications Act to address those concerns.

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<sup>48</sup> FCC Order 96-489, ¶ 314. The separate proceeding is the Access Charge Reform Notice of Proposed Rulemaking.

We agree with the FCC that the access charge concerns expressed by AT&T and MCI are speculative. As PB Com notes, access charges in California are the lowest in the nation; this Commission has led the way on reform of access charges. There is no evidence that manipulation of access charges presents a serious risk in this case, nor is this application proceeding the forum in which access charges need to be further reviewed.

## **21. Part 32 Accounting**

PB Com asks that we depart from our customary practice of requiring a new telecommunications company to keep its books and records in accordance with the Uniform System of Accounts (USOA)<sup>49</sup> specified in Part 32 of Title 47 of the Code of Federal Regulations. PB Com notes that the FCC in its Accounting Safeguards order did not impose Part 32 accounting on Bell affiliates, concluding that generally accepted accounting principles (GAAP) were sufficient.<sup>50</sup>

Part 32 accounting requirements have been imposed on all interLATA and intraLATA carriers authorized to do business in California. As AT&T witness Dianne Toomey noted, this accounting system is the one commonly used both by management and by the Commission in performing audits and in monitoring compliance with affiliate transaction rules. It has the advantage of familiarity and conformity both for the Commission and for our staff.

We see no reason to make an exception for PB Com in these accounting requirements. The FCC has elected not to impose Part 32 accounting requirements on interexchange affiliates of local exchange carriers, but there is nothing in the FCC order that precludes states from imposing the Part 32 requirements on these carriers. We elect to do so.

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<sup>49</sup> Part 32 of Title 47 of the Code of Federal Regulations delineates the rules for the USOA for telecommunications companies.

<sup>50</sup> FCC Order 96-490, ¶ 170.

## **22. Other Proposed Restrictions**

The parties have proposed numerous additional restrictions on Pacific Bell's provision of services to PB Com. Because our order today precludes PB Com's entry into local exchange service, defers consideration of facilities-based intraLATA authority, imposes a separate staff requirement on Pacific Bell's marketing of PB Com services, and restricts the use of customer proprietary information in selling PB Com services, the need for many of these proposed restrictions is either eliminated or lessened. Nevertheless, we will discuss the additional proposals briefly and explain our reasoning for not adopting them at this time.

### ***22.1 Showing of Pacific Bell Indifference***

ORA urges the Commission to condition its grant of authority to PB Com to resell intraLATA service on the completion of a study which demonstrates that Pacific Bell's net income will not be reduced as a result of granting such authority. TURN agrees, although its witness candidly added that "I'm skeptical about how those studies actually get reviewed and how seriously they end up being taken."<sup>51</sup> As ORA's witness acknowledged, such a study would require assumptions of how many intraLATA customers would switch from Pacific Bell to PB Com versus the number of customers who otherwise would switch from Pacific Bell to competing intraLATA providers. We are not persuaded on this record that the time and effort to produce and evaluate such a study are justified in light of PB Com's decision to forgo its request for local exchange authority. As we have noted, such a study can be considered if PB Com later reinstates its request for local exchange authority.

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<sup>51</sup> Transcript, Vol. 10, p. 1207.

## **22.2 Non-Tariffed Goods and Services**

Noting evidence that PB Com has in place agreements to receive 28 non-tariffed services from Pacific Bell, ORA urges that the Commission require that all such agreements (except joint marketing agreements) be terminated, and that future agreements be limited to those available under tariff or to those non-tariffed goods or services that are critical or essential to PB Com's operation.

ORA witness Elfner testified that existing contracts may harm Pacific Bell to the extent that they divert employee attention from Pacific Bell to PB Com, and that they drain regulatory resources in overseeing cost allocation rules. He noted that the Commission in the Pacific Bell Information Services case (1992) 45 CPUC2d 109, limited services by Pacific Bell to its new subsidiary to those which the subsidiary could not reasonably obtain on its own or through third-party vendors.

The FCC in its Non-Accounting Safeguards order prohibited a Bell company's long distance affiliate from obtaining, operating, installing and maintaining services related to transmission and switching facilities from the Bell company, concluding that such services create the opportunity for operational integration that could preclude independent operation.<sup>52</sup> However, the FCC declined to limit further sharing of services, commenting:

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<sup>52</sup> FCC Order 96-489, ¶ 163.

"We find that, if we were to prohibit the sharing of services, other than [network operating, installation and maintenance], a BOC and a section 272 affiliate would be unable to achieve the economies of scale and scope inherent in offering an array of services. We do not believe that the competitive benefits of allowing a BOC and a section 272 affiliate to achieve such efficiencies are outweighed by a BOC's potential to engage in discrimination or improper cost allocation."<sup>53</sup>

PB Com witnesses testified that this Commission's affiliate transaction rules recognize that Pacific Bell will provide services to its affiliates, and they specify how those services must be priced to ensure ratepayer indifference to the transaction. For services received from Pacific Bell, PB Com must pay the higher of fully distributed cost plus 10% or market value. Further, PB Com witnesses noted that Pacific Bell services available under tariff must be purchased by PB Com through the tariff, rather than under contract.

We are not persuaded that it is necessary to impose restrictions on services Pacific Bell will provide to PB Com beyond those already present in the FCC rules and in our own affiliate transaction rules. Allowing Pacific Bell and PB Com to achieve economies of scale and scope will reduce overall costs, with the ultimate beneficiaries being consumers who will pay lower prices for telephone services. Like the FCC, we believe that this advantage outweighs the potential for discrimination or improper cost allocation that are prohibited by our existing rules.

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<sup>53</sup> Id., ¶ 179.

### **22.3 Employee Transfers**

ORA proposes that the Commission prohibit transfer of employees from Pacific Bell to PB Com except on a documented showing that Pacific Bell would be indifferent to a particular employee leaving, that is, that other employees were available to take on the work of the departing employee, or that the departing employee was no longer necessary to Pacific Bell. ORA's witness noted that 67 of PB Com's first 80 employees came from Pacific Bell, and that 60% of PB Com's vice presidents were recruited from Pacific Bell.

PB Com witness Elfner testified that ORA's reliance on an early check of the PB Com roster overstates the percentage of former Pacific Bell employees, and that there has been a significant drop in the percentage of former Pacific Bell employees as a result of hiring in 1996. Another PB Com witness stated that the ORA proposal would be unfair to employees:

"PacBell does not have mastery over its employees, nor do they 'belong' to PacBell's ratepayers. They should be free to take their training and experience to PacBell's competitors or any other firm, and they will do so if PacBell cannot give them attractive opportunities."<sup>54</sup>

ORA has not shown that the Pacific Bell transfers to PB Com are harmful to Pacific Bell, and the 25% transfer fee that PB Com pays Pacific Bell under the Commission's affiliated transaction rules provides compensation to Pacific Bell for any training expenses incurred in replacing an employee. The Commission requires quarterly reporting of employee movement to and from Pacific Bell, including information on why the Pacific Bell employee was released and whether he or she was replaced, and this early warning system should help us monitor whether a problem is emerging. We decline on this record to impose additional constraints on employee transfers to PB Com.

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<sup>54</sup> Emmerson, Ex. 103 at 13.



## ***22.4 Proprietary Information***

AT&T and MCI urge that the Commission establish additional safeguards on proprietary information provided by Pacific Bell to PB Com. At the time of hearing, it was not clear whether there was a requirement for other carriers to be notified when Pacific Bell provides such data to PB Com. The FCC's Accounting Safeguards order clarifies this matter. The FCC determined that a Bell operating company should:

"...provide a detailed written description of the asset or service transferred and the terms and conditions of the transaction on the Internet within 10 days of the transaction through the company's home page....The information must also be made available for public inspection at the public place of business of the BOC."<sup>55</sup>

Accordingly, while there is no FCC requirement for Pacific Bell to notify other parties of the transfer of proprietary information, the requirement that this information appear on Pacific Bell's Internet home page and at its principal place of business appears to respond to the concerns raised at hearing.

## ***22.5 Other Limitations***

A number of parties have proposed various other requirements on PB Com, including pricing restrictions, a prohibition on special contracts between PB Com and Pacific Bell, and a requirement for quarterly financial reports. We find that the evidence in support of these proposals is unpersuasive in light of the existence of our affiliate transaction rules and the safeguards established in the FCC orders related to Bell operating company affiliates.

## ***23. Comments on Proposed Decision***

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with PU Code § 311 and Rule 77.1 of the Rules of Practice and Procedure. Comments were required within 20 days of mailing, and replies to comments were permitted five days thereafter.

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<sup>55</sup> FCC Order 96-490, ¶ 122

### **Findings of Fact**

1. PB Com is a California corporation, wholly owned by Pacific Telesis, and is the long-distance affiliate of Pacific Bell.
2. The Telecommunications Act of 1996 requires that the entry of a Bell operating company like Pacific Bell into the in-region long distance market must occur through a separate affiliate.
3. The separate affiliate requirement is to expire three years after the Pacific Bell affiliate begins service, unless the time period is extended by the FCC.
4. To begin long distance service, PB Com must obtain authority both from this Commission and from the FCC.
5. PB Com filed its application in this proceeding on March 5, 1996, seeking a certificate of public convenience and necessity to provide resold and facilities-based interLATA and intraLATA service, and local exchange service.
6. After hearings, PB Com announced that it was willing to forgo its request for local exchange authority because, in PB Com's view, FCC rulings make that authority unnecessary.
7. Protests to PB Com's application were filed by the California Telecommunications Coalition, representing long distance carriers, TURN, and others; the Association of Directory Publishers, and the Commission's Division of Ratepayer Advocates (now the Office of Ratepayer Advocates).
8. On August 9, 1996, parties were advised that Commission consideration of Pacific Bell compliance with the FCC competitive checklist requirement would be considered in another proceeding, rather than in this proceeding.
9. Ten days of hearing were conducted between December 2 and December 19, 1996, with final briefs filed on February 14, 1997.
10. At the request of several parties, the ALJ on March 21, 1997, took official notice of a declaration by a Pacific Telesis officer and permitted filing of briefs on that subject by April 4, 1997.
11. Section 272(b) of the Telecommunications Act requires, among other things, that the long distance affiliate of a Bell operating company shall operate independently,

maintain separate accounts, have separate officers and directors, obtain credit without reliance on the Bell company, and conduct all transactions with the Bell operating company on an arm's length basis.

12. Section 272(c) of the Telecommunications Act requires, among other things, that a Bell operating company may not discriminate between its long distance affiliate and other telecommunications entities, and shall account for all transactions with its long distance affiliate pursuant to FCC accounting principles.

13. Section 272(e) of the Telecommunications Act requires, among other things, that a Bell operating company shall fulfill orders from unaffiliated telephone companies as quickly as it does for its affiliated companies; shall not provide certain facilities and services to an affiliate unless they also are available on the same terms to unaffiliated companies; shall charge an affiliate or impute to itself the same access charges assessed on others; and shall provide interLATA and intraLATA facilities to its long distance affiliate on the same terms as such facilities are made available to others.

14. PU Code § 709.2(c) requires this Commission, before it authorizes interLATA long distance competition, to determine that all competitors have nondiscriminatory access to exchanges; that a local exchange company does not make unfair use of subscriber information or customer contacts based on the company's provision of local exchange service; that there is no improper cross-subsidization of intrastate service; and that there is no substantial possibility of harm to competitive intrastate telephone markets.

15. PB Com has presented evidence intended to show that it already is constrained by federal and state regulations, and that further regulations will hinder its ability to compete with dominant long distance carriers.

16. Long distance carriers, joined by ORA and TURN, have presented evidence intended to show that Pacific Bell's marketing power gives the Telesis companies an unfair advantage that, unless constrained, will work to the long-term disadvantage of competition and consumers.

17. PB Com showed that AT&T, MCI and Sprint collectively control 95% of consumer long distance revenue and dominate the residential long distance market with 93% of households.

18. PB Com showed that the ability to offer one-stop shopping, i.e., a bundled product of local, local toll, long distance and other services, is important in marketing telecommunications services.

19. PB Com will utilize a variety of marketing techniques but expects to obtain from 50% to 60% of its new customers through Pacific Bell marketing efforts.

20. Pacific Bell intends to use customer proprietary information in marketing PB Com services after obtaining customer permission to do so.

21. Under the Commission's affiliate transaction rules, PB Com states that it will pay the tariff rate for services received from Pacific Bell under tariff; that it will pay the higher of fully distributed cost plus 10%, or market rate, for Pacific Bell services not offered under tariff; that it will pay a transfer fee of 25% of the annual salary of any Pacific Bell employee hired by PB Com; and that it will pay for Pacific Bell sales activities at the higher of fully distributed cost plus 10%, or market rate, plus an additional 13% for a successful sale.

22. Under the Commission's affiliate transaction rules, Pacific Bell must report to the Commission any pending sale or transfer to PB Com of an asset valued in excess of \$100,000, and it must seek advance approval of any guarantee of securities or debt obligations for PB Com.

23. ORA presented evidence intended to show that approval of PB Com's application without restrictions is likely to reduce Pacific Bell revenues and cause Pacific Bell's network to deteriorate.

24. ORA presented Pacific Telesis internal documents that purported to show plans to migrate high value customers from Pacific Bell to PB Com.

25. The Telesis companies have provided no documented projections of toll revenues, customers, or net income expected to be lost by Pacific Bell as a result of PB Com's application.

26. ORA presented evidence intended to show a risk that, with facilities-based service, PB Com would receive Telesis resources that otherwise would go to the Pacific Bell system.

27. ORA presented evidence intended to show that PB Com should be regulated as a dominant carrier to reduce the risk of anticompetitive behavior by Pacific Bell, and that price floors for PB Com service are necessary to be sure that such services are not subsidized and priced below cost.

28. MCI presented expert testimony estimating that it will be at least five years before most California customers have a choice of facilities-based local exchange carriers.

29. Pacific Bell serves 94% of the intraLATA residential customers in its service area and Pacific Bell has a monopoly in the provision of access service, the service that long distance carriers need to originate and terminate long distance calls.

30. Pacific Telesis is coordinating the relationship between Pacific Bell and PB Com and intends to select and manage the firms that will provide advertising and conduct market research.

31. Pacific Telesis corporate costs are 15% higher than AT&T's costs.

32. Pacific Bell receives many millions of calls each year from consumers because of its long-standing position as the monopoly local exchange carrier in its territory.

33. TURN witnesses presented evidence intended to show that Pacific Bell would violate state law if it tries to market PB Com services on virtually all incoming calls.

34. Sprint plans to enter the California local exchange market in competition with Pacific Bell.

35. Pacific Bell has encountered difficulty in filling change orders for other carriers that seek to resell local exchange service, at one time limiting such changes to 400 a day, increasing to 2,000 per day five days a week earlier this year.

36. Every customer switched from Pacific Bell local service to PB Com local service would mean a reduction in revenue from Pacific Bell.

37. Relatively little competition exists in the local exchange market, but there are hundreds of telephone carriers in California seeking to provide long distance and intraLATA service.

38. PB Com does not anticipate a need for facilities-based intraLATA service in its early years of operation.

39. No party opposes PB Com's application to become a long distance carrier, but virtually all parties except PB Com propose restrictions on the marketing of that service.

40. Telesis opposes an FCC order that precludes PB Com from sharing long distance transmission and switch facilities of Pacific Bell.

41. The Telecommunications Act prescribes the timing of PB Com's entry into the long distance market.

42. FCC Order 96-489 permits Pacific Bell to market PB Com's long distance service on inbound calls, provided that Pacific Bell informs callers for new service that they have a choice of long distance carriers.

43. Pacific Bell intends to use its power in the local exchange market to maximum advantage in garnering business for PB Com.

44. By prior Commission decisions, we authorized competition in providing interLATA telecommunications service. By D.94-09-065, 56 CPUC2d 117 (1994), we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

45. PB Com has demonstrated that it has the required amount of cash available to meet its start-up expenses.

46. PB Com has demonstrated that its management possesses the requisite technical experience to operate its service.

47. PB Com has submitted with its application a draft of its initial tariff, and this tariff complies with Commission requirements.

48. The Commission has routinely granted nondominant interexchange carriers an exemption from the Rule 18(b) requirement that the application be served on cities and counties in the proposed service area.

49. Exemption from the provisions of PU Code §§ 816-830 has been granted to other resellers.

50. The transfer or encumbrance of property of nondominant carriers has been exempted from the requirements of PU Code § 851 whenever such transfer or encumbrance serves to secure debt. (See D.85-11-044, 19 CPUC2d 206 (1985).)

### **Conclusions of Law**

1. An applicant for a certificate of public convenience and necessity has the burden of showing that the public interest requires that the authority sought be granted.

2. PB Com has asked to withdraw its application for local exchange authority, and that request should be granted.

3. PB Com's attempt to place conditions on its withdrawal of part of its application should be rejected.

4. PB Com's application for authority to provide resold intraLATA service should be granted.

5. PB Com's request for authority to provide facilities-based intraLATA service should be denied, without prejudice to later refiling.

6. PB Com's application to provide resold and facilities-based interLATA service should be granted, subject to the requirements of the Telecommunications Act of 1996 and FCC and Commission rulings.

7. PB Com should be required to arrange for a separate staff of Pacific Bell customer service representatives to perform joint marketing on behalf of PB Com.

8. The separate staff of Pacific Bell customer service representatives that will do joint marketing on behalf of PB Com should not have access to Pacific Bell's CPNI.

9. PB Com should be regulated as a nondominant provider of intraLATA and interLATA services.

10. The Office of Ratepayer Advocates should be directed to arrange an audit of PB Com, with emphasis on affiliated transaction and cost allocation compliance, as part of, or at the same time as, the joint FCC/state audit, with costs to be borne by PB Com.

11. PB Com should not be required to pay a royalty for its use of the Pacific Bell name.
12. The order in this proceeding should not address access charge reform.
13. PB Com should not be required at this time to conduct a study demonstrating that Pacific Bell's net revenue will not be reduced as a result of granting operating authority to PB Com.
14. No restrictions need be imposed on Pacific Bell services to PB Com beyond those already in place.
15. No additional constraints are necessary on the transfer of Pacific Bell employees to PB Com.
16. No further requirements are necessary beyond those imposed by the FCC on reporting of proprietary information provided by Pacific Bell to PB Com.
17. Applicant has the financial ability to provide the proposed service.
18. Applicant has made a reasonable showing of technical expertise in telecommunications.
19. Public convenience and necessity require the interLATA and intraLATA services that will be offered by PB Com.
20. PB Com is subject to:
  - a. The current 3.2% surcharge applicable to all intrastate services except for those excluded by D.94-09-065 as modified by D.95-02-050 to fund Universal Lifeline Telephone Service (PU Code § 879; Resolution T-15799, November 21, 1995);
  - b. The current 0.36% surcharge applicable to all intrastate services except for those excluded by D.94-09-065 as modified by D.95-02-050 to fund the California Relay Service and Communications Devices Fund (PU Code § 2881; Resolution T-15801, October 5, 1995);
  - c. The user fee provided in PU Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 1996-1997 fiscal year (Resolution 4782);
  - d. The current surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (PU Code § 739.30; D.96-10-066, pp. 3-4, App. B, Rule 1.C.; set by Resolution T-15987 at 0.0% for 1997, effective February 1, 1997);



e. The current 2.87% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F.); and

f. The current 0.41% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G.).

21. PB Com should be exempted from the Rule 18(b) requirement of service of the application on cities and counties.

22. PB Com should be exempted from PU Code §§ 816-830.

23. PB Com should be exempted from PU Code § 851 when the transfer or encumbrance serves to secure debt.

24. The application should be granted to the extent set forth below.

25. Because of the public interest in competitive interLATA and intraLATA services, the following order should be effective immediately.

## **O R D E R**

### **IT IS ORDERED that:**

1. A certificate of public convenience and necessity is granted pursuant to Public Utilities Code (PU Code) § 1001 to Pacific Bell Communications (PB Com) to operate as a facilities-based and resale interLocal Access and Transport Area (interLATA) carrier and as a resale intraLocal Access and Transport Area (intraLATA) carrier, subject to the terms and conditions set forth below.

2. PB Com's request to withdraw its application to operate as a facilities-based and resale competitive local carrier is granted; to the extent that PB Com continues to seek authority to provide local exchange authority, that request is denied.

3. PB Com's request to provide facilities-based intraLATA service is denied, without prejudice to PB Com's right to refile for such authority at a time when it can state definitively the facilities it intends to construct.

4. The authority granted today is conditioned upon PB Com entering into an agreement by which joint marketing of its services by Pacific Bell on incoming calls to Pacific Bell will be conducted exclusively by a separate staff of customer service representatives to whom customer calls can be referred upon agreement for such referral by the incoming caller.

5. The authority granted today is conditioned upon PB Com entering into an agreement with Pacific Bell in which Pacific Bell agrees that the separate staff of customer service representatives responsible for joint marketing of PB Com will not have access to Pacific Bell's Customer Proprietary Network Information.

6. The authority granted today is conditioned upon a periodic audit to be conducted, at PB Com expense, under auspices of the Commission's Office of Ratepayer Advocates (ORA) of PB Com's compliance with the Commission's affiliate transaction rules and cost allocation rules. The ORA is directed to consult with the Federal Communications Commission (FCC) Common Carrier Bureau to coordinate the audit with the joint FCC/state audit to be conducted by the Common Carrier Bureau.

7. Without obtaining prior approval of this Commission, PB Com is prohibited from accepting network transmission and switching services from Pacific Bell unless such services are available to all telecommunications providers on a non-discriminatory basis.

8. Except as set forth in these ordering paragraphs, all further restrictions and limitations on PB Com's authority proposed by protestants in this proceeding are denied.

9. PB Com's exercise of the authority granted herein is conditioned upon PB Com's compliance with the requirements of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 47 U.S.C. §§ 151 et seq.

10. PB Com shall file a written acceptance of the certificate granted in this proceeding.

11. a. Applicant is authorized to file with this Commission tariff schedules for the provision of interLATA and intraLATA service. Applicant may not offer interLATA and/or intraLATA service until tariffs are on file. Applicant's initial filing shall be made

in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall be effective not less than one day after filing. Applicant shall comply with the provisions in its tariffs.

b. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future tariffs is subject to the schedules set forth in Ordering Paragraph 5 of D.90-08-032 (37 CPUC2d 130 at 158), as modified by D.91-12-013 (42 CPUC2d 220 at 231) and D.92-06-034 (44 CPUC2d 617 at 618):

"5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

- "a. Inclusion of FCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day's notice.
- "b. Uniform rate reductions for existing services shall become effective on five (5) days' notice.
- "c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.
- "d. Uniform minor rate increases, as defined in D.90-11-029, for existing services shall become effective on not less than five (5) working days' notice. Customer notification is not required for such minor rate increases.
- "e. Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice.
- "f. Advice letter filings merely revising the text or location of text material which do not cause an increase in any rate or charge shall become effective on not less than five (5) days' notice."

12. PB Com may deviate from the following provisions of GO 96-A: (a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reissue of sheet numbers, and (b) paragraph II.C.(4), which requires that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these

deviations shall be subject to the approval of the Commission's Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which applicant is subject, as reflected in Conclusion of Law 20.

13. PB Com shall file as part of its initial tariff, after the effective date of this order and consistent with Ordering Paragraph 3, a service area map.

14. Prior to initiating service, PB Com shall provide the Commission's Consumer Services Division with PB Com's designated contact person(s) for purposes of resolving consumer complaints and the corresponding telephone number. This information shall be updated if the name or telephone number changes, or at least annually.

15. PB Com shall notify this Commission in writing of the date interLATA and intraLATA service are first rendered to the public within 5 days after service begins.

16. PB Com shall keep its books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32.

17. PB Com shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form developed by the Commission and contained in Attachment A.

18. PB Com shall ensure that its employees comply with the provisions of PU Code § 2889.5 regarding solicitation of customers.

19. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

20. The corporate identification number assigned to PB Com is U- -C, which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

21. Within 60 days of the effective date of this order, PB Com shall comply with PU Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

22. PB Com is exempted from the provisions of PU Code §§ 816-830.

23. PB Com is exempted from PU Code § 851 for the transfer or encumbrance of property, whenever such transfer or encumbrance serves to secure debt.

24. PB Com is exempted from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that the rule requires PB Com to serve a copy of its application on the cities and counties in which it proposes to operate.

25. If PB Com is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 20, the Telecommunications Division shall prepare for Commission consideration a resolution that revokes the applicant's certificate of public convenience and necessity, unless the applicant has received the written permission of the division to file or remit late.

26. The application is granted, as set forth above.

27. Application 96-03-007 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

# DRAFT

A.96-03-007 ALJ/GEW/sid

## ATTACHMENT A

Page 1

TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission  
Auditing and Compliance Branch, Room 3251  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call (415) 703-1961.

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ATTACHMENT A

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Information Requested of California Interexchange Telephone Utilities.

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).  
If incorporated, specify:
  - a. Date of filing articles of incorporation with the Secretary of State.
  - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is a:
  - a. Regulated public utility.
  - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

(END OF ATTACHMENT A)

**DRAFT**

Category	Proposed Additional Safeguards/Restrictions	Resolution of Issue Via the FCC's Recent Rulings
Joint Marketing	Pac Bell not allowed to market PBCom interLATA services to customers who call Pacific Bell for their local service. (AT&T-Kargoll, pg. 4 & 15; MCI-Cornell, pg. 9; TURN-Costa pg. 6-7, Long Pg. 13)	The FCC ruled that BOCs are allowed to joint market PBCOM interLATA service on inbound calls regarding local service. FCC 96-489 ¶ 292
	PBCom must obtain a study of market value of joint marketing services provided by PacBell. (ORA-Elfin, pg. 64)	The FCC found that existing FCC and state accounting safeguards are adequate to protect against improper cross-subsidization, and it declined to impose any additional accounting rules on intrastate services. FCC 96-490 ¶ 44
	Joint Marketing for PBCom performed by separate and different service reps than those that take orders for PacBell services. (MCI-Cornell, pg. 9; TURN-Costa, Pg. 12)	The FCC ruled that no additional regulations are necessary to implement joint marketing and that BOCs will be permitted to engage in the same type of marketing activities as other service providers. FCC 96-489 ¶ 291
	PBCom required to use name substantially different than Pac Bell. (ORA-Elfin, pg. 70)	The FCC imposed no restrictions on the use of BOC names by 272 affiliates.
	Apply 13% referral fee to all PBCom sales revenues generated by PacBell. (ORA-Elfin, pg. 57-58)	The FCC ruled that no additional regulations are necessary to implement joint marketing and found that existing FCC and state accounting safeguards are adequate to protect against improper cross-subsidization. FCC 96-489 ¶ 291, FCC 96-490 ¶ 44
Affiliate Transactions	PBCom required to compensate Pacific Bell for use of its name to ensure against cross subsidization by Bell. (AT&T-Kargoll, pg. 8)	The FCC ruled that no additional regulations are necessary to implement joint marketing and found that existing FCC and state accounting safeguards are adequate to protect against improper cross-subsidization. FCC 96-489 ¶ 291, FCC 96-490 ¶ 44
	PBCom required to use Part 32 (USOA) (AT&T-Toomey, pg. 5, 10)	The FCC ruled that 272 affiliates must maintain their books in accordance with GAAP instead of Part 32 Accounting. FCC 96-490 ¶ 91



**DRAFT**

Category	Proposed Additional Safeguards/Restrictions	Resolution of Issue Via the FCC's Recent Rulings
Affiliate Transactions (continued)	Quarterly financial reports by PBCom available for public review. (AT&T-Toomey, pg. 7, 10)	FCC will not review affiliate prices or profits. The FCC rejected AT&T's suggested annual audit, relying instead on biennial audits. FCC 96-489 ¶ 258, FCC 96-490 ¶ 203
	Annual outside audits over and above FCC Part 64 attestation audit. (AT&T-Toomey, pg. 7-8, 10)	The FCC rejected AT&T's suggested annual audit, relying instead on biennial audits. FCC 96-490 ¶ 203
	Discontinue provision of non-tariff employee consulting services except those required for joint marketing. (ORA-Elfin, pg. 50-51)	The FCC permits the sharing of administrative and other services ... they decline to impose a prohibition on all shared services. FCC 96-489 ¶ 168
	Commission examination of PBCom's transactions and relationships after operations begun for compliance and test for new safeguards (ORA-Elfin, pg. 77)	The FCC permits the sharing of administrative and other services ... they decline to impose a prohibition on all shared services. FCC 96-489 ¶ 168
CPNI	If a Pac Bell rep wants to use CPNI to sell PBCom services it must get customer approval for use by all unaffiliated carriers and notify all carriers that the information is available. (AT&T Kargoll, pg. 10)	The FCC states that it will address CPNI issues in a subsequent order in CC Docket No. 96-115. FCC 96-489 ¶ 300
	Bell should not be allowed to ask for permission to use CPNI "when customers would be most likely to see a benefit from granting permission" (MCI-Cornell, pg. 10)	The FCC states that it will address CPNI issues in a subsequent order in CC Docket No. 96-115. FCC 96-489 ¶ 300
Regulation	Dominant regulatory status for PBCom's services (with tariff filings, cost support and price floors in all markets) (AT&T-Kargoll pg. 14 & Economides, pp. 27-28; TURN-Costa, pp. 12-13 & Long, pg. 13; MCI-Cornell, pg. 13; ORA-Elfin, pp. 73-74; Sprint-Purkey, pg. 9; CCTA-Kalut, pg. 23)	FCC will not review affiliate prices or profits. FCC rules that further rules on predatory pricing are not necessary because federal antitrust law applies to predatory pricing and the danger of successful predation is small. FCC 96-489 ¶ 258